TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 18

PETER ALFONS BINDCZYCK, PETITIONER,

vs.

THOMAS G. FINUCANE, INDIVIDUALLY AND AS CHAIRMAN OF THE BOARD OF IMMIGRATION APPEALS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 15, 1951.

CERTIORARI GRANTED APRIL 30, 1951.

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[1] In the United States District Court for the District of Columbia. Filed June 15, 1948. Harry M. Hull, Clerk.

Civil Action No. 2464-48

PETER ALFONS BINDCZYCK, 85-58 Dongan Avenue, Elmhurst, Long Island, New York, PLAINTIFF

v.

THOMAS G. FINUCANE, individually and as Chairman of the Board of Immigration Appeals, U. S. Department of Justice, Apex Building, Washington, D. C.

TOM CLARK, individually and as Attorney General of the United States, U. S. Department of Justice, 9th and Pennsylvania Avenue, N. W., Washington, D. C., and

WATSON MILLER, individually and as Commissioner of Immigration and Naturalization, U. S. Immigration and Naturalization Service, 19th and East Capitol Streets, Washington, D. C., DEFENDANTS

COMPLAINT FOR A JUDGMENT DECLARING PLAINTIFF A NATIONAL OF THE UNITED STATES; AND FOR A JUDGMENT DECLARING PLAINTIFF A CITIZEN OF THE UNITED STATES; AND FOR INJUNCTIVE RELIEF

Comes now the plaintiff by his attorneys herein and for his complaint against each and all of the defendants does allege as follows:

Count I

1. Jurisdiction over the subject matter of this Count I is conferred upon this Honorable Court by Section 503 of the Nationality Act of 1940, 8 U.S.C. Sec. 903.

2. Defendant, Tom Clark, is the Attorney General of the United States, and as such is the head of the Department of Justice, a [2] department of the United States Government hereinafter denominated the Department. He is officially resident in the District of Columbia.

3. Defendant, Thomas G. Finucane, is the Chairman of the Board of Immigration Appeals (hereinafter denominated the Board), and as such is the head of said Board, an agency of the United States Government in the Department. He is officially resident in the District of Columbia.

4. Defendant, Watson Miller, is the Commissioner of Immigration and Naturalization, and as such is the head of the United States Immigration and Naturalization Service (hereinafter denominated the Service), an agency of the United States in the Department. He is officially resident of the District of Columbia.

5. Plaintiff resides in the city and state of New York.

6. Plaintiff became a national of the United States by naturalization as a citizen of the United States in the Circuit Court of Frederick County, Maryland, on December 2, 1943, all pursuant to the Constitution of the United States, and the governing statutes provided by the Congress of the United States. And his certificate of naturalization, numbered 6089814, was duly issued by said Circuit Court.

7. The order of the Circuit Court of Frederick County, Maryland, admitting plaintiff to United States citizenship, all as alleged in the foregoing paragraph 6, has never been revoked and set aside pursuant to the provisions of Section 338 of the Nationality Act of 1940, 8 U.S.C. Sec. 738, and plaintiff's certificate of naturalization, numbered 6089814, has never been cancelled pursuant to said section 338 of the Nationality Act of 1940.

8. Plaintiff's United States citizenship, acquired as aforesaid by naturalization, has never been lost by expatriation.

[3] 9. Plaintiff's United States citizenship, acquired as aforesaid by naturalization, has never been lost in any way. Plaintiff is and has been ever since December 2, 1943 a citizen and national of the United States.

10. Plaintiff has resided in the United States for a period of ten years beginning in June, 1938.

11. In November, 1942, plaintiff married his wife, Helen Bindczyck, a native-born citizen of the United States. Since

that time, plaintiff has pursued happiness in the bosom of his family, consisting of said Helen, his wife; their daughter, a native-born citizen of the United States, now 2½ years of age; said Helen's mother, a citizen of the United States, now pensioned by the United States Government as the widow of a veteran of the Spanish-American war; and said Helen's five brothers, all native-born citizens of the United States, four of whom served in the Armed Forces of the United States in World War II, two of them now being on pension for injuries received in said service.

12. Plaintiff supports his wife and child by following in the United States his occupation of tool worker and designer.

13. It is the right or privilege of a citizen national of the United States to continue to live at home in the United States; to pursue happiness in the midst of his family, and if that family be all citizens of the United States, living in the United States, to remain with them in the United States; to support his wife and child in the United States by following in the United States a lawful occupation; to vote in local, state, and national elections in the United States; and to be free of the application to him of any statute, regulation, power, or procedure which pertains solely to aliens.

14. Plaintiff is entitled as a citizen national of the United States to all of the foregoing rights and privileges described in paragraph 13.

[4] 15. It is plaintiff's right as a citizen-national to have in his possession the certificate of naturalization, numbered 6089814, which evidences his United States citizenship, and to have such certificate free of any tampering, obliterations, or additions by any one.

16. Each of the foregoing rights and privileges of a national of the United States, described in the foregoing paragraphs 13, 14 and 15, is denied to plaintiff by the Department and its constituent agencies, the Board and the Service.

17. The Department through its Board and Service holds plaintiff in its custody and has finally ordered plaintiff

deported as an alien, despite his insistence that he is a citizen-national of the United States, as aforesaid.

18. The exercise of such powers of custody and deportation, pertaining solely to aliens, deprive plaintiff of his privilege and right as a national of the United States to be free of the application to him of all statutes, regulations, powers and procedure pertaining solely to aliens.

19. Unless this Court declares plaintiff to be a national of the United States, the Department through its Service will deport plaintiff from the United States thus depriving him of his rights and privileges as a national of the United States to live with his family in the United States, and to support his wife and child in the United States by pursuit of a lawful calling in the United States, and thus seriously prejudicing his right and privilege as a citizen-national of the Unted States to vote in national, state and local elections in the United States.

20. The Department through the Service has possession of plaintiff's certificate of naturalization, numbered 6089814. The Service refuses to return said certificate to plaintiff; and, as plaintiff is informed and believes, has marked said certificate "cancelled"; thus depriving plaintiff of his right as a naturalized, citizen-national of the United States to have such evidence of his naturalization free of the tamperings, bliterations, and additions of the Department, Service [5] or any person.

21. After plaintiff's admission as a citizen of the United States by his naturalization as set forth in paragraph 6 above, the Circuit Court of Frederick County, Maryland, upon motion of the Service served, filed and heard on December 9, 1943, entered an order on December 9, 1943 revoking and setting aside its previous order admitting plaintiff to citizenship.

22. Said order of December 9, 1943 purporting to revoke and set aside plaintiff's citizenship is null, void and of no effect.

23. Said order of December 9, 1943, complied in no way with the requirements of Section 338 of the Nationality

Act of 1940, 8 U.S.C. Sec. 738. Said section prescribes the requirements laid down by the Congress for the revoking, setting aside, and cancelling of citizenship obtained by naturalization.

24. The defendants admit that said Circuit Court's order of December 9, 1943 was not entered in accordance with said Section 338 of the Nationality Act of 1940. Nevertheless, the Department through its Board and Service denies plaintiff rights and privileges as a national of the United States upon the sole basis of said order of December 9, 1943.

25. Wherefore plaintiff respectfully prays:

(1) for a judgment declaring him to be a national of the United States;

(2) as ancillary and intermediate relief for a restraining order, and thereafter a temporary injunction enjoining the defendants, pending this Honorable Court's determination of this cause, from prejudicing and mooting such determination and disturbing the status quo by deporting plaintiff from the United States or taking any steps toward such deportation; and

(3) for such other and further relief as may appear appropriate in the premises.

[6] *Count II*

26. Jurisdiction over the subject matter of this Count II is conferred upon this Honorable Court by paragraphs (1) and (22) of Section 24 of the Judicial Code, 28 U.S.C. Sec. 41(1)(22); by Section 274d of the Judicial Code, 28 U.S.C. Sec. 400; and by Sections 262 and 264 of the Judicial Code, 28 U.S.C. Secs. 377 and 378.

27. Plaintiff is a citizen of the State of New York.

28. Defendant Clark is the Attorney General of the United States, and as such has the ultimate executive power in administration of the laws regulating the immigration of

aliens. Defendant Miller is the Commissioner of Immigration and Naturalization, and as such does regularly, under the supervision of defendant Clark, deport from the United States such persons as defendant, Finucane, directs or approves. Defendant, Finucane, is the Chairman of Board of Immigration Appeals, and as such does, under the supervision of defendant, Clark, approve orders of defendant, Miller, or issue orders to defendant, Miller, directing the deportation of persons from the United States.

29. Defendant, Clark, is a citizen of the State of Texas. Defendant, Finucane, is a citizen of the State of Maryland. Defendant, Miller, is a citizen of the District of Columbia. All defendants may be found in the District of Columbia. All defendants are sued in this Count as individuals.

30. Plaintiff incorporates in this Count as if continuously set forth herein in numerical order the allegations of paragraphs 6 through 15, and 21 through 24 of this complaint.

31. Defendant Miller acting under the supervision of defendant Clark, and in accordance with the approval and instructions of defendant Finucane, does wilfully and without authority of law:

(1) hold plaitiff in his custody and restrain him of his liberty, and threatens to, and will, continue to do so unless defendants [7] are restrained by this Honorable Court, all to the irreparable injury of plaintiffs.

(2) threaten to, and will forcibly deport plaintiff from the United States, separate him from his wife and child and other members of his family, deprive him of his home and livelihood in the United States, and prejudice his future right as a citizen to vote in elections in the United States, all to the irreparable injury of plaintiff; and

(3) hold, and will continue to hold plaintiff's certificate of naturalization, numbered 6089814, refuse; and will continue to refuse to return such certificate

to plaintiff, and, on information and belief, has marked such certificate "cancelled," all, unless ordered otherwise, clouding plaintiff's status as a citizen of the United States and to his irreparable injury.

32. The matter in controversy between the plaintiff and each and all of the defendants exceeds $3,000.

33. Plaintiff has no adequate remedy at law.

34. Wherefore plaintiff respectfully prays for:

(1) an immediate restraining order and thereafter a preliminary injunction, pending the determination of this cause, enjoining each and all of the defendants from deporting plaintiff from the United States and from taking any steps toward such deportation;

(2) a declaratory judgment, upon final hearing, declaring plaintiff to be a citizen of the United States;

(3) a permanent injunction, upon final hearing, ordering each and all of the defendants, unless and until plaintiff has lost his United States citizenship in some manner provided by law, to cease exercising any dominion over [8] plaintiff under any of their powers relating solely to aliens, to refrain from deporting plaintiff from the United States and to cease all steps or activities toward such deportation, and to return to plaintiff his certificate of naturalization, numbered 6089814, or a duplicate thereof, without mutilation, tampering, additions, or obliterations by the defendants; and

(4) such other and further relief as may appear appropriate in the premises.

[10] Filed June 15, 1948. Harry M. Hull, Clerk. Civil Action No. 2464-'48.

MOTION FOR TEMPORARY RESTRAINING ORDER

Comes now the plaintiff by his attorneys herein and moves for a temporary restraining order against each and

all of the defendants. In support of such motion plaintiff states that:

1. He resides in the United States together with his wife and child, who are American citizens.

2. Plaintiff has, at the very least, a bona fide and reasonable claim that he is an American citizen.

3. Plaintiff is entitled under the law to a judicial determination of his claim to American citizenship; and accordingly has filed this law suit to secure such determination and for other relief.

4. Nevertheless, defendants have threatened to, and, unless restrained by this Court, will forcibly deport plaintiff from the United States thus separating him from his family and depriving him of the judicial determination of his claim to American citizenship to which he is entitled.

All as set forth in greater detail in the verified complaint which is attached and made a part of this motion.

Wherefore plaintiff prays for a temporary restraining order restraining each and all of the defendants:

[11] 1. from deporting plaintiff from the United States; and

2. from taking any steps toward deporting plaintiff from the United States.

[12] Filed June 15, 1948. Harry N. Hull, Clerk. Civil Action No. 2464-48.

ORDER

Whereas plaintiff has filed herein his motion for a temporary restraining order; and

Whereas the Court has considered such motion, in Chambers; and counsel for the plaintiff there appearing; and

Whereas the Court has considered the papers heretofore filed in this suit, including plaintiff's verified complaint and his motion for a temporary restraining order; and

Whereas it appears to the Court from such motion and such papers that, unless the Court issues a restraining order, plaintiff will suffer irreparable injury in being deprived of his right to a judicial determination on his claim to citizenship:

NOW THEREFORE, it is ORDERED that each and every of the defendants, and their officers, agents, servants, employees, and attorneys are hereby restrained from deporting plaintiff or taking any steps toward the deportation of plaintiff.

This Order shall remain in effect for ten days or until the further order of the Court for good cause shown.

AND IT IS FURTHER ORDERED that plaintiff's motion for temporary injunction be set down for hearing on 24th of June 1948, ... at 10 A.M. in the Motions Court.

T. Alan Goldsborough
Justice

Entered June 15th, 8:45 P.M.

[13] Filed June 24, 1948. Harry M. Hull, Clerk. Civil Action No. 2464-48.

Consent Order Granting Preliminary Injunction

This cause having been set down for hearing on June 24, 1948, upon the application of the plaintiff for a preliminary injunction; and it now appearing that all defendants consent to the entry of a preliminary injunction; and the Court finding that the granting of a preliminary injunction will preserve the status quo pending final determination by the Court of this cause:

NOW, THEREFORE, IT IS ORDERED that each and every of the defendants, and their officers, agents, servants, employees, and attorneys are hereby enjoined from:

1. Deporting plaintiff from the United States; and

2. Taking any steps toward the deportation of plaintiff from the United States.

This order shall endure until the entry of the final order of the Court in this proceeding.

T. ALAN GOLDSBOROUGH
Justice

Entered this 24th day of June, 1948:

Defendants, Thomas G. Finucane, Tom Clark, and Watson Miller, by their counsel herein, do hereby consent to the entry of the foregoing Order granting plaintiff a preliminary injunction.

ROSS O'DONOGHUE
Counsel for Defendants

[14] MOTION TO DISMISS

Come now the defendants and by their attorney, the United States Attorney, move this Court to dismiss the above entitled complaint and for reason therefore state that the complaint fails to state a cause of action upon which relief may be granted.

[15] Defendants' Exhibit No. 1 filed in connection with motion to dismiss.

[16] STATEMENT MADE BY MARCUS AUSTAD
Re: Peter A. Bindczyck

On December 2nd at the Frederick County Courthouse, Frederick, Maryland during the proceedings of a naturalization hearing, I was in the process of addressing a group of 80 naturalization applicants. While addressing this group I noticed one of them with a smirk on his face, leading me to believe that he was insincere. Upon completion of my

remarks I called Bindczyck outside of the courtroom and tried to advise him of the seriousness of naturalization. I told him that he looked insincere when I was telling the group that naturalization was a rare privilege afforded to comparatively few people on this earth and that there were many people in Europe who would gladly trade places with him. I stated that now was the time to make known his sincerity or insincerity. Whereupon he replied, looking as though he were hurt, that I was mistaken. Then I told him that if I was mistaken I was sorry and I apologized. Whereupon he returned to the courtroom and in a few moments the Judge came in and proceeded with the swearing in of the applicants.

The following day Bindczyck received a promotion which was indicative of assignment overseas. He immediately contacted the assignment officer and stated in direct contradiction to the oath he had sworn to the day prior stating that he would not fight against Germany or Japan. He was immediately arrested and brought under guard to the Post Intelligence Officer, Major William L. Dooley. Major Dooley interrogated Bindczyck for an hour and a half attempting to gain his confidence and to determine why he had this change of heart, if it was a change of heart. This was all to no avail. Bindczyck stated that he had been mistreated in this country and had been persecuted to no end; that he had no love for this country and would not fight either against Germany or Japan. At this time Bindczyck signed a statement to that effect.

CPL. MARCUS J. AUSTAD

Dec. 7, 1943.
Washington, D. C.

Sworn to before me this 7th day of December 1943,

JAMES S. HAMILTON, JR.
U. S. Naturalization Examiner.

[17] In the matter of the Naturalization Proceedings of Peter Alfons Bindczyck.

Petition No. 299-M. In the Circuit Court for Frederick County, Maryland.

STENOGRAPHIC TRANSCRIPT of hearing held before Chief Judge Edward S. Delaplaine, December 9, 1943.

Present: Leicester W. Cook, Esq., of the Immigration and Naturalization Service, Washington, D. C.

Major William L. Dooley; Corporal Marcus Austad.

Peter Alfons Bindczyck.

(Mr. Cook) Your Honor, the Government has here a motion to set aside and vacate the order of admission signed by this Court on December 2nd relative to the admission to citizenship of Peter Alfons Bindczyck, Petition No. 299, filed in this Court on that same date. Is Peter Alfons Bindczyck here now?

(Bindczyck) Yes.

Q And you are the same person who filed a petition on December 2nd, is that right?

A. Yes.

Q And you have read those papers I served you?

A Yes, sir.

CORP. MARCUS AUSTAD, being first duly sworn, deposes and testifies as follows:

By Mr. Cook:

Q You are Corporal Marcus Austad of Camp Ritchie, is that right?

[18] A That is correct.

(Mr. Cook) I wish to offer this affidavit, copy of which has been furnished the applicant, in evidence)

Q You were present on December 2, 1943, when the applicant, Peter Alfons Bindczyck, was admitted to citizenship?

A Yes.

Q Did anything occur on that day which led you to believe he may not be sincere in his statement?

A As always, I addressed the group, a group of 80, and told them of the seriousness of citizenship and the privilege involved therein, and as I scanned the Court room as I usually do, I noticed one soldier who led me to believe by his appearance that he was not sincere, and in the presence of the 80 and of the two naturalization examiners and two men who were with me, I asked that man out of the Court room to have a little talk with him, and I spoke to him out there and asked him if he was sincere, and asked him to tell me that if was not sincere that now was the time to make that known. He said that I was mistaken, that these grins or smirk on his face was that I had taken that in error, and with those words I pardoned myself for having judged him incorrectly, and told him to go back and sit down, and the Court proceeded.

Q Did anything happen on December 3rd which would lead you to believe that this man did not take the oath of allegiance on December 2, 1943, with all sincerity?

A The morning of December 2nd, while he was down here in Court, he was promoted to Technician, Third Grade. The next morning after he returned from Court here, from the Naturalization Court, he returned to Camp Ritchie, and that morning he went to the assignment officer and said words to the effect that he wouldn't fight, whereupon he was brought down to the Post Intelligence [19] Office to Major Dooley, who is here today, and stated the same thing, and the Major then talked to him for quite a while and tried to gain his confidence and told him what would happen, and tried to get the idea behind the man's sudden change of heart, whereupon he still maintained that he wouldn't fight, that he had no love for this country and that he would sign a statement to that effect, which he did.

Q (The Court) What effect does his conduct have on his military service? Does he remain in the United States Army?

A That I don't know. I don't know just what we will have. Major Dooley perhaps will be better qualified.

MAJOR WILLIAM L. DOOLEY, being first duly sworn, deposes and says:

By Mr. Cook:

Q What is your name?

A William L. Dooley, Major QMC, Post Intelligence Office, Camp Ritchie.

Q You questioned this applicant on December 3 regarding his loyalty and his willingness to fight for the United States, is that correct? A. I did.

Q Did he indicate that he was unwilling to bear arms for the United States? A. He did.

Q Did he indicate that he did not wish to remain in the United States after this war was over? A. He did.

(The Court) I might ask you if you know what effect his action has on his military service.

A His future military service, the Army can take care of it, and if they decide not to, then the Department of Justice can.

[20] Q He is the only one of the men who has acted in this manner?

A Yes, sir.

Q Has he been performing his duties properly in the last week?

A He has. In the last week he has been out to one of our sort of little bivouac camps and I haven't been out there.

Q What is his military rank?

A Right now he is Private, but he had been promoted, having qualified for a special type of assignment, and he seemed to rank a promotion I think at the time of the naturalization, and was to be part of a group scheduled to

perform special duties for which he had been trained and qualified, and he became of this frame of mind. As is said in one of the statements here, dealing with juveniles in trouble over twelve years in New York City, trying to understand the cause and then bringing about an adjustment, I tried to get at the root of his feelings. It seems to center around—he has a feeling of persecution, not due to any act or actions of anybody that he has come in contact with in the Army since his induction, but all happened back in civil life—very unfair experiences that seem to be cropping up in his mind now and may be causing his disaffection. Although I tried to point out that nothing we can do now can right this trouble and that many of us have that trouble of unjust treatment and so forth in the past, to keep thinking of it prevents him from doing a good job in the future, and tried to remove that feeling of persecution that may have cropped up in his mind, which maybe was justified at that time—I mean before he came in the Army. Since coming in the Army he has been able to have the opportunity to try to use the qualifications he has, he has succeeded and proved capable, and I told him that the future would be enhanced, his chance of getting along in the event of an honorable discharge after the war, and that the action he was [21] taking now would be an obstacle in his path; in plain words, I told him he was putting himself behind the eight ball, and that nobody was persecuting him but himself.

Leicester W. Cook, Examiner, being first duly sworn, deposes and says:

By the Court:

Q What do you know about the case of Bindczyck?

A On December 2, 1943, I was assigned with another officer of our Service—the Immigration and Naturalization Service—to conduct naturalization proceedings under Section 701 of the National Act of 1940, and among the eighty applicants that we had on that day was Peter Alfons Bindczyck. He was asked the usual questions, that is,

whether he believed in this form of Government and his answer was yes; and he was also asked the question as to whether he was willing to bear arms against all enemies of the United States, and his answer was also yes.

Q You have had no contact with him since?

A I have not talked to him since except to serve the notice of this hearing upon him.

PETER ALFONS BINDCZYCK, being first duly sworn deposes and says:

By Mr. Cook:

Q What is your name?

A Peter Alfons Bindczyck.

Q Are you a soldier in the United States Armed Forces at the present time? A. Yes.

Q Whereabouts are you stationed?

[22] A Camp Ritchie, Maryland.

Q Were you present on December 2, 1943, when a group of soldiers were examined and filed petitions for citizenship and admitted in this Court to citizens at that time?

A Yes.

Q Did you testify on that date that you believed in this form of Government?

A No, I didn't.

Q Did you testify that you were willing to bear arms against all enemies? A. Yes.

Q You were served with some papers today. Have you read those papers? A. Yes.

Q Did you read that affidavit which was dated December 3rd and signed by you? A. Yes.

Q I now show you this affidavit and ask you if that is your signature? A. Yes, it is.

Q And did you make that affidavit voluntarily?

A I was asked to make an affidavit. That is why I did it.

Q Why were you asked to write such an affidavit?

A To have some kind of evidence or whatever you might call it to present about my opinion.

Q This affidavit clearly sets forth your opinion, is that correct? A. Yes.

Q You do not wish to change that statement in any way?

A Could I read it once more, please? (Referring to paper marked Exhibit B.) When I said here that—"and wish to go back to Germany after the war," I supposed that Germany will have a different government, and not the same Nazi government.

Q That is presumed to be true, but the affidavit sets forth your feelings that you do wish to return to Germany, is that correct?

A Not necessarily. I have my choice. I mean if I don't [23] want to fight for this country I can't expect to remain in this country, and the country I came from is Germany. That is why I mentioned Germany here.

Q You definitely do not wish to fight for the United States, is that correct?

A No, that is correct.

Q When you were here on December 2, 1943 and filed your petition, did you feel the same way at that time?

A Yes.

Q How long before had you felt that way?

A. I have felt that way for several weeks, but I mean it just didn't pop up that way.

Q. You felt that way when you came in here and filed the petition on the morning of December 2, 1943, is that correct?

A Yes.

Q (The Court) Did I understand you to say you did swear that you approved of this Government and that you would fight for this country?

A While I was in Court here, yes, sir.

Q You were swearing falsely at that time?

A Yes, sir.

Q (Mr. Cook) Is there anything further you wish to say in this matter?

A Well, the reason why I swore falsely is because that some people have had me before and while I was an alien, and I figured that these people were nice people and I didn't want to bring them any trouble. While I was an enemy alien, I figured being I was made a citizen would sort of break up the connections between these people and me, because in a way they were sponsors for me, because one of the witnesses who was my sponsor and many other people signed statements about me, about my character and so on.

Q (The Court) Is that all? A. Yes, sir.

[24] At a Special Hearing in the Circuit Court, Frederick County, held at Frederick, Maryland, this 9th day of December, 1943

MOTION ON BEHALF OF THE UNITED STATES GOVERNMENT TO VACATE AND SET ASIDE ORDER OF ADMISSION TO CITIZENSHIP IN THE CASE OF PETER ALFONS BENDCZYCK, PETITION No. 299

PETITIONER personally appeared this date to show cause why the order of admission to citizenship dated December 2, 1943, should not be vacated and set aside.

UPON hearing the testimony and the evidence submitted in this cause of action, and motion having been made on behalf of the United States Government by Leicester W. Cook, United States Naturalization Examiner of the Immi-

gration and Naturalization Service, Washington, D. C., to vacate and set aside order of admission to citizenship dated December 2, 1943, it is hereby

ORDERED that the order of admission to citizenship dated December 2, 1943, List No. 22, with respect to Line No. 14, Sheet 1, as to petitioner PETER ALFONS BENDCZYCK, Petition No. 299, is hereby vacated and set aside, and restored to the pending calendar for immediate hearing, and it is further

ORDERED that the original and duplicate certificate of naturalization No. 6089814 issued thereon be voided and returned to the Immigration and Naturalization Service.

EDWARD S. DELAPLAINE
Chief Judge of the Circuit Court for
County, at Frederick, Maryland,

[26] PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Comes now the plaintiff, by his attorney herein, and respectfully moves the Court for summary judgment in his favor, granting the relief prayed for in his complaint. And for reasons therefor plaintiff respectfully states that there is no material issue of fact, and that plaintiff is entitled to judgment as a matter of law.

[27] ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This cause came on to be heard on Monday, January 31, 1949, upon Motion of the Defendants to Dismiss and Motion of the Plaintiff for Summary Judgment. Upon consideration of said motions, the exhibit to said Motion to Dismiss and the Points and Authorities filed in support of said motions, and after hearing the argument of counsel for both sides in open court, the Court finds that there is no genuine issue of fact, and concludes that the Plaintiff is entitled to judgment as a matter of law. Therefore, it is ORDERED that:

1. The Defendants' Motion to Dismiss is denied,

2. Plaintiff's Motion for Summary Judgment is granted.

3. Plaintiff is declared to be a national and citizen of the United States.

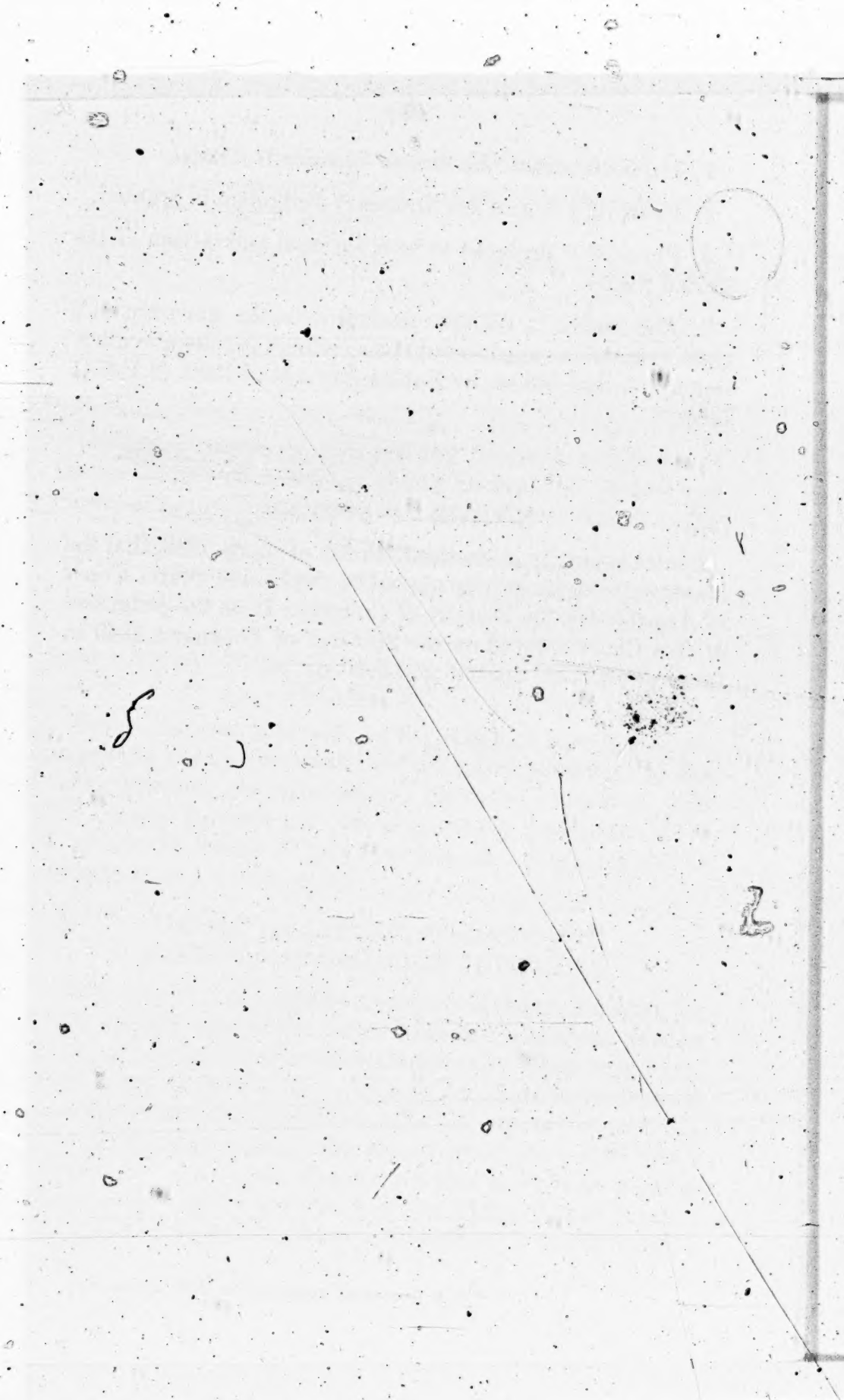
4. This order is without prejudice to the government's right to institute appropriate proceedings for denaturalization under Sec. 338 of the Nationality Act of 1940. (8 U.S.C. 738).

DAVID A. PINE, *Judge.*

[28] NOTICE OF APPEAL

Notice is hereby given this 20th day of April, 1949, that the above defendants hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 21st day of February, 1949 in favor of plaintiff against said defendants.

☆ U. S. Government Printing Office, 1949 J856382/179



[fol. 22] Minute entry of argument and submission February 13, 1950, omitted in printing.

[fol. 23] [File endorsement omitted]

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10287

THOMAS G. FINUCANE, INDIVIDUALLY AND AS CHAIRMAN OF THE BOARD OF IMMIGRATION APPEALS; J. Howard McGrath, Individually and as Attorney General of the United States; Watson B. Miller Individually and as Commissioner of Immigration and Naturalization, Appellants

v.

PETER ALFONS BINDCZYCK, Appellee

Appeal from the United States District Court for the District of Columbia

Argued February 13, 1950—Decided June 19, 1950

Mr. L. Clark Ewing, Assistant United States Attorney, with whom *Messrs. George Morris Fay,* United States Attorney, *Ross O'Donoghue,* Assistant Unifed States Attorney, and *Joseph M. Howard,* assistant United States Attorney, were on the brief, for appellants.

Mr. Joseph A. Fanelli for appellee.

Before Clark, Wilbur K. Miller and Proctor, Circuit Judges

OPINION

CLARK, Circuit Judge:

The appellants, defendants below, have prosecuted this appeal to test the validity of a summary judgment in favor of the appellee, Bindczyck, declaring him to be a citizen of the United States and granting him appropriate injunctive relief.

Peter Alfons Bindczyck, while a member of our armed forces stationed at Camp Ritchie, Maryland, became a

citizen of the United States by naturalization order of the Circuit Court of Frederick County, Maryland, on December 2, 1943, and his certificate of naturalization, No. 6089814, was duly issued by that court. Seven days later, on December 9, 1943, within the same term of the same court, on motion by Leicester W. Cook, United States Naturalization Examiner of the Immigration and Naturalization Service, Washington, D. C., made on behalf of [fol. 24] the United States Government in the original proceedings, "the order of admission to citizenship . . . [was] vacated and set aside, and restored to the pending calendar for immediate hearing, and . . . the original and duplicate certificate of naturalization . . . [was ordered] voided and returned to the Immigration and Naturalization Service."[1] The basis for that court's order, as appears from the transcript of the hearing on the motion filed in the United States District Court for the District of Columbia in connection with appellants' motion to dismiss the complaint, was that Bindczyck's, shortly after he was naturalized, made statements to the effect that he had no love for the United States and that he would not fight for this country. At the hearing on the motion in the Maryland court he testified that he had previously stated in court that he was willing to bear arms against all enemies and that he approved of this government, whereas neither statement was true and he was testifying falsely at the time.

Although appellee mentions that the motion was filed, served, heard and decided all on the same day; that he was away from home under military orders and under military arrest at the time; and that he was without counsel, he specifically waives any rights that he might have acquired had any of this procedure departed from the rules of the Maryland court or from the constitutional guarantees of due process on the ground that they are irrelevant to the issue presented here. And the appellants admit that the procedure by which appellee's naturalization order was set

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[1] Order of the Circuit Court, Frederick County, Maryland, entered December 9, 1943, after a special hearing on motion to vacate and set aside Bindczyck's naturalization order and signed by Edward S. Delaplaine, Chief Judge.

aside and vacated in no way complies with section 338 of the Nationality Act of 1940[2] which provides:

"(a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 301 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured.

"(b) The party to whom was granted the naturalization alleged to have been fraudulently or illegally procured shall, in any such proceedings under subsection (a) of this section, have sixty days' personal notice in which to make answer to the petition of the United States; and if such naturalized person be absent from the United States or from the judicial district in which such person last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought."

[fol. 25] Nor would we now hesitate to uphold appellee had the appellants, though proceeding as they did, purported to have acted pursuant to the provisions of the aforesaid section. In such cases the authorities are abundantly clear in denying the allowance of the order vacating and setting aside a naturalization where the strict letter of section 338 as laid down by Congress is not followed. But appellants' position is that that section (and its predecessor, section 15 of the 1906 Act,[3] which for the purposes of this opinion is substantially the same) does not abridge the heretofore existing remedies for setting aside and vacating such orders but merely enlarges them. Section 338 is simply cumulative in effect and does not provide the only and exclusive method whereby a naturalization order may be vitiated. Appellee, on the other hand, has taken the position, which prevailed below, that Congress, by virtue of the Constitution which empowers it "to . . . establish uni-

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[2] 54 Stat. 1158, 8 U. S. C. 738.

[3] 34 Stat. 601, 8 U. S. C. (1934 ed.) 405.

form rule of naturalization,"[4] has, by enacting section 338 of the Nationality Act of 1940, and its predecessor section 15 of the 1906 Act, effectively foreclosed the possibility of vacating and setting aside an order of naturalization by any other method than the one thus prescribed; and, since the government has not proceeded in accordance with that section, the appellee is entitled to a declaratory judgment proclaiming his citizenship.

That Congress has the power to enact uniform laws governing denaturalization cannot be doubted.[5] But the first question before us involves the extent to which Congress has exercised this power, and not whether the power exists to the extent which would be necessary in order to sustain appellees position; for only if we conclude that it has exercised this power so as to make the remedy thus provided exclusive of all others that may have heretofore existed, would we then have to decide whether the constitutional grant extended so far. Doubt has been expressed in that regard.[6]

Little has been written on the question before us, and so before we proceed to an examination of whatever authority there is on the subject, it will be helpful to place the problem in its proper posture. Stripped to its essentials the question is: Has Congress, by enacting a statute governing denaturalization, proscribed the power of a naturalizing court of proper jurisdiction to set aside, vacate, and assign for rehearing its own order of naturalization within the same term of court, in the same manner, and on the same grounds as any other of its judgments similarly assailed?

[fol. 26] There are certain basic fundamentals with which we should first acquaint ourselves. These are:

(1) An order of naturalization is like any other judgment of the court issuing the order.[7]

(2) Judgments of a court of record are appealable.[8]

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[4] Art. 1, sec. 8, cl. 4.

[5] Knauer v. United States, 328 U. S. 654, 673, 90 L. Ed. 1500, 1511, 66 S. Ct. 1304, 1314 (1946).

[6] In re Macoluso's Naturalization, 237 Pa. 132, 85 Atl. 149, Ann. Cas. 1914 B 226 (1912).

[7] Tutun v. United States, 270 U. S. 568, 70 L. Ed. 738, 46 S. Ct. 425 (1926).

[8] And naturalization orders are appealable, Tutun v. United States, *supra*, note 7.

(3) Under proper circumstances judgments of a court of record are subject to being opened up, modified, corrected, set aside, and vacated.[9] The power of a court to so act, though much modified today by statute, existed at common law [10] and has always been exercised in the judicial discretion of such court.[11]

(4) The proceeding to vacate a judgment, especially when made within the same term of court, is generally regarded as a further proceeding in the same action.[12]

(5) A statutory remedy is to be considered as cumulative of existing common law remedies, unless the contrary is so declared in express terms or by necessary implication.[13]

From the foregoing it would appear, therefore, that independently of any decisional law, the Circuit Court for Frederick County, Maryland, has the power to set aside and vacate its own naturalization order within the same term of court in the same way that it may set aside and vacate any other of its judgments. But the appellee insists that section 338 of the Nationality Act of 1940 as well as its predecessor were clearly intended by Congress to be exclusive of all other pre-existing methods of denaturalization. With but one exception, however, (*United States ex rel. Volpe* v. *Jordan*),[14] none of the cases cited by him refer to the situation here but rather to a proceeding in which the Government has avowedly sought its authority to act from either section 15 of the 1906 Act or section 338 of the current Act. Of course the broad language gleaned from these cases supports the proposition that there must be strict compliance with the statute. There is no question that Congress so intended. But it is self evident that these cases cannot be used as authority on the present question, especially in view of the fact that in none of them does the government contend, even though it may have failed to com-

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[9] 31 Am. Jur. 263, and cases cited therein.

[10] Sunderland, et al. v. Braun Packing Co., et al., 119 Md. 125, 130, 86 Atl. 126, 127, Ann. Cas. 1914 D 166 (1912).

[11] Sunderland, et al. v. Braun Packing Co., et al., *supra*, note 10, at 129, 86 Atl. at 127.

[12] 31 Am. Jur. 268.

[13] Hoage v. Murch Bros. Const. Co., 60 App. D. C. 218, 220, 50 F. 2d 983 (1931).

[14] (C. C. A. 7, 1947) 161 F. 2d 390.

ply with the statutory conditions for denaturalization, that the authority to proceed as it did could be found elsewhere. Furthermore, as far as we have been able to ascertain, in [fol. 27] none of these cases was the attempted denaturalization instituted in the court issuing the naturalization order within the same term that the order was issued, as a part of the original proceeding, rather than as a separate proceeding under the statute. Likewise, appellee, in taking issue with the appellants' statement to the effect that the legislative history affords us little help in determining the intent of Congress, alludes to language in committee reports, statements of Cabinet Officers, and a statement made on the floor of the house, which gives as little support for his position as is found in those cases cited by him which we have rejected for inappositeness. Whatever language there may be is broad, vague and indefinite as pertains to the precise question before us.

Appellee is left, therefore, with but one clear authority in his favor, the *Volpe* case, where the question before the court was whether or not the respondent's plea in bar to Volpe's petition for writ of habeas corpus for release from respondent's custody on the ground that he (Volpe) had been unlawfully denaturalized should be sustained. Volpe, who had been naturalized by order of the Superior Court of Cook County on March 27, 1920, had his naturalization order vacated and set aside by that same court seven days later. In his petition he alleged that this had been unlawfully done because he had received no notice of the motion to vacate and set aside the order. The respondent's plea in bar was based on a prior case in which Volpe had sought to test the validity of a deportation order and which was adversely decided against him by the Supreme Court. It was respondent's position that all the questions involving the alienage of Volpe including his deportability were adversely decided against him in that case. In reversing the lower court for sustaining this plea in bar the court held that it was apparent from reading the opinions in the deportation litigation that the issue now presented was not decided, and the plea in bar was improperly sustained. At this point the court's opinion was sufficient to remand the case in order that the lower court might initially determine the issues as to the legality or illegality of the petitioner's denaturalization; but instead of doing that it chose to proceed with the

remarks, *inter alia*, relied on so heavily now by the present appellee. It held, in essence, two things: (1) That the Nationality Act of 1940 provided the exclusive method whereby a person could be denaturalized, and (2) even if the Nationality Act was not exclusive, the proceedings complained of would be void for failure to give notice pursuant to the rules of the Superior Court of Cook County. Appellants here contend that that court's holding in regard to the exclusiveness of remedy under the Nationality Act is *dicta*; but whether it is or not is immaterial to us; for in any event [fol. 28] we feel it lacks force as authority for the reason that we believe it is based on a misunderstanding of the effect of a naturalization order as a judgment and of the effect that the Federal Rules of Civil procedure have on such proceedings.

The *Volpe* decision states:

"[A] State court when acting in naturalization matters does so as a Federal court or as an agent of the Federal government. It seems plain that when acting in such capacity it cannot depend upon an iota of authority which may stem from its own rules or the State law, whether embodied in statutory provisions or in the decisions of its courts." [p. 395.]

From this it concludes that it had no authority or jurisdiction to act in the premises unless pursuant to the federal statute. Principal reliance for this proposition is placed on a statement in *Grahl* v. *United States* [15] which when taken out of context would seem to lend support; but examined in the light in which it was used it is clear that it is conditioned by the purpose for which it was used, namely, to rebut the contention that the federal courts had no authority to vacate naturalization orders of state courts because that amounted to an invasion of the sovereign power of the state. That this statement from the *Grahl* case would not have been intended to convey the meaning ascribed to it is borne out by another statement found on the same page where it was said:

"A court that has jurisdiction of a stated subject-matter and has the necessary parties before it is empowered to act honestly upon a mistaken view of the law as fully as upon a

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[15] (C. C. A. 7, 1919) 261 Fed. 487.

correct view; and its judgment, though based on errors of law, is impervious to collateral attack in other courts or in the same court, but not to direct attack. Direct attacks, through motions for rehearing, bills of review, and appeals, are usual and of old-time familiarity. Procedure under section 15 is new and unusual. But none the less it is plainly a direct attack." [p. 490.]

The *Volpe* decision also relies upon *United States* v. *Ankervik*[16] to support this position, but in that case there is such clear *dicta, contra,* sustaining the appellants' contentions in the present case that we set it out in full:

"[A naturalization order] being a judgment with the ordinary characteristics or attributes of a judgment of a court of record importing verity, it is not more vulnerable to attacks upon its validity and effectiveness as a final and conclusive adjudication than any other judgment of a court of record having competent jurisdiction in the premises. Following this is the contention that a judgment of the kind, under the long-established and well-settled practice of the courts of equity, cannot be impeached by direct proceeding for fraud, consisting of perjury or false swearing in rendering testimony, whereby the court was induced to give the judgment, nor for errors of the court in its deduction from the testimony adduced from which the judgment proceeded. Courts generally, excepting some perhaps of the [fol. 29] more limited, have jurisdiction to reverse their own judgments and decrees during the term at which they are rendered. In pursuance of such authority they may, for error of law, or for fraud, mistake, or any irregularity that might seem to them to have affected either of the parties to the controversy injuriously, set aside their judgments and decrees, and award a new trial or rehearing, and thus give opportunity for righting whatever wrong may have been engendered. After the term has ended, however, the authority of the courts to this purpose ceases, unless extended by statute, or by motion, or some appropriate procedure taken within the time. This rule applies as well to equity procedure as to procedure at law. Other means of relief for the errors of the court are usually afforded by writ of error or appeal, and in equity a bill of review will lie, within

[16] (D. C. Ore., 1910) 180 Fed. 137.

rules prescribed by law, for evidence discovered after the decree has become final. All such proceedings [sic] are taken and prosecuted in the same suit or action and not by separate controversy. When, therefore, the term is at an end without the appropriate initiation of an available proceeding to revise or set aside the court's final judgment or decree, and no appeal or other means of review is prosecuted within the time afforded by authoritative regulation, such judgment or decree becomes an absolute finality, forever binding upon the parties and their privies, utterly without power of change, revision, revocation, or relief within the cause or proceeding in which it is rendered." [p. 143.]

The *Volpe* case also seems to find some support for its position in the Federal Rules of Civil Procedure, Rule 81 (a) (2) and (6). Rule 81 (a) (2) states:

"In the following proceedings appeals are governed by these rules, but they are not applicable otherwise than on appeal except to the extent that the practice in such proceedings is not set forth in statutes of the United States and has heretofore conformed to the practice in actions at law or suits in equity; admission to citizenship . . ."

And Rule 81 (a) (6) says:

". . . The provisions for service by publication and for answer in proceedings to cancel certificates of citizenship under . . . 338 . . . remain in effect . . ."

All that Rule 81 (a) (2) does is make the Federal Rules of Civil Procedure applicable to naturalization proceedings on appeal by either party. And all that Rule 81 (a) (6) does is make them inapplicable as regards to the time allowed for notice and answer in proceedings under section 338 of the Nationality Act of 1940. But we cannot see how this helps that court because it still does not say that the rules are inapplicable in cases such as this one where there is an attempt to vacate and set aside a naturalization order during the period when the court still has jurisdiction over the proceedings. At best the Federal Rules are equivocal on this point. It certainly cannot be said that they support the view that the proceedings under section 338 are exclusive of

all other methods by which a naturalization order may be vacated and set aside.

[fol. 30] Nor does the *Volpe* decision even mention the earlier case of *In re Macoluso's Naturalization*,[17] a leading authority for appellants' position here. As authority therefore, the *Volpe* case stands much weakened in our eyes.

Appellants rely principally on *In re Macoluso's Naturalization*,[18] *United States* v. *Aakervik*,[19] *Petition of Weltzien*,[20] and *United States* v. *Ovens*.[21] Of these the *Macoluso* case, being most directly in point, is the strongest authority favoring their position, and appellee has been unable to assail its holding other than to say that it presents a remarkable illustration of the wisdom of Congress in making section 338 exclusive because there the naturalization certificate of a person dead for many years was cancelled. In addition to assuming his premise for the purposes of his observation, appellee also fails to realize that the *Macoluso* case was a leading authority of 28 years standing for the very proposition now in issue when Congress in 1940 substantially reenacted section 15 of the 1906 Act. Certainly, had Congress felt that it presented an evil to be rectified, it would have indicated in some way its intention to correct the impression of that case.

The *Weltzien* case involved a motion by the government for a rehearing on newly discovered evidence in a naturalization proceeding. The motion was made within the same term of court and in no way complied with the requirements of section 338. The district court denied the motion but in doing so had to meet the contention that the government's exclusive remedy was under section 338. It said in this regard:

". . . Even a perfunctory examination of the matter discloses that this argument is untenable.

"Sec. 738 [sec. 338] which is practically identical with Sec. 15 of the Nationality Act of June 29, 1906, outlines the procedure to be followed in a cancellation or revocation proceeding and is supplemental to any other remedy which is

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[17] Note 6, *supra*.

[18] Note 6, *supra*.

[19] Note 16, *supra*.

[20] (D. C. N. Y., 1946) 68 F. Supp. 1000.

[21] (C. C. A. 4, 1926) 13 F. 2d 376.

available to obtain a rehearing of the original naturalization proceeding. . . .

"The proceeding before this court is not a revocation or cancellation proceeding. It is, as I stated at the outset, an application for a rehearing predicated upon alleged newly discovered evidence. If I am correct in my assertion that an order granting citizenship is no different than any other judgment, it must of necessity be as vulnerable as any other kind of judgment.

"There have been instances where petitions for naturalization have been denied and thereafter, on motion of the government, granted on newly discovered evidence. Obviously in such situations no problem is encountered since both the government and the petitioner are satisfied.
[fol. 31] "The converse of this proposition is equally true. So that an order granting citizenship may be vacated on newly discovered evidence." [p. 1002]

Although not involving precisely the point in issue here, the *Welzien* case certainly supports the appellants' position. Appellee attacks it by saying, "The statement is described, by Judge Mandelbaum who made it, as 'a perfunctory examination of the matter'" which has been "authoritatively held erroneous in its own jurisdiction. See *U.S. ex rel. Stabler* v. *Watkins*, 168 F. (2d) 883 (C. C. A. 2nd, 1948)." Appellee is in error, however, in saying that Judge Mandelbaum's words in regard to a "perfunctory examination" of the matter purport to characterize the type of examination which he makes in the following paragraphs. Appellee conveniently omits the word "even" from his quotation. Nor is there any support for appellee's claim that this statement had been held "authoritatively erroneous." The case which he cites, *arguendo*, for the holding, neither mentions the *Weltzien* case nor in any way attempts to deal with this kind of a situation. It falls into that group of cases cited by appellee which are inapposite to the question at hand because they deal with the entirely different situation where the government is professedly proceeding under the statute to set aside a naturalization order.

The *Ovens* case cited by appellants inferentially supports their contentions. There the court held that although the government had failed to appeal from the denial of a motion to cancel and declare void a naturalization certificate made in the same court, within three months of the issuance of

the certificate, the government was not thereafter estopped from bringing an independent bill in equity elsewhere at a later date for cancellation of the naturalization certificate because such a motion in the original proceedings is not the equivalent of a proceeding under section 15 of the 1906 Act. The court said at page 377 that that section "creates a new remedy, which in some respects is broader than that existing independently of statute . . ." though narrower than the protection afforded the government on appeal in the original cause.[22] Thus the court indirectly recognized that the government in effect has two bites of the apple in these proceedings, one by motion in the original cause and the other by the statutory proceeding. Appellee thinks that the "necessary rationale" of the decision supports his view that the motion in the original proceeding was void for noncompliance with the statute and hence was not a bar to the later action by the government. Otherwise, he claims, all the requirements of *res judicata* were present. What he has failed to realize, however, is that an additional remedy has been created by [fol. 32] statute which removed such proceedings from the bar of *res judicata* created by the adjudication in the original cause.

We have already sufficiently dealt with the *Aakervik* case, *supra*. Admittedly the statements there are *dicta*, but they clearly support appellants' position here, and are not, as appellee characterizes them, ambiguous.

Certainly, as we have said, independently of any decisional law, we would hold in favor of the appellants because of the inherent and historical power of a court over its own judgments within the same term in which they were rendered; because of the fact that it has been held by the Supreme Court that orders of naturalization are like any other judgments of the court issuing the order; and because such powers of a court are not to be construed cut off unless by explicit language. But in addition the weight of authority favors the appellants, and it is the opinion of this court that section 338 of the Nationality Act of 1940 is cumulative in effect and does not exclude the other available remedies for setting aside and vacating naturalization orders as judgments at least while the issue is still in the course of its original proceeding.

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[22] Tutun v. United States, *supra*, note 7.

It follows, therefore, that the District Court erred in granting appellee the summary judgment. The case is accordingly reversed and remanded with instructions to the lower court to enter a judgment dismissing the complaint pursuant to appellants' motion below.

Reversed and remanded.

[fols. 33-44] [File endorsement omitted]

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

April Term, 1950

No. 10287

THOMAS G. FINUCANE, individually and as Chairman of the Board of Immigration Appeals, et al., Appellants,

v.

PETER AFONS BINDCZYCK, Appellee

Appeal from the United States District Court for the District of Columbia.

Before: Clark, Wilbur K. Miller, and Proctor, Circuit Judges.

JUDGMENT—June 19, 1950

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court with instructions to enter a judgment dismissing the complaint upon defendants' motion to dismiss.

Per Circuit Judge Clark.

Dated June 19, 1950.

Petition for rehearing covering 9 pages filed July 3, 1950 omitted from this print.

[fol. 45] UNITED STATES COURT OF APPEALS

[Title omitted]

Before: Clark, Wilbur K. Miller, and Proctor, JJ.

ORDER—September 28, 1950

Upon consideration of appellee's petition for rehearing before the full Court of the appeal herein, It is

Ordered by the Court that appellee's petition for rehearing before the full Court of the appeal herein be, and it is hereby, denied.

Per Curiam.

[File endorsement omitted.]

[fols. 46-47] Designation of record omitted in printing.

[fol. 48] Clerk's Certificate to foregoing record omitted in printing.

[fol. 49] UNITED STATES COURT OF APPEALS

[Title omitted]

Before Clark, Wilbur K. Miller and Proctor, Circuit Judges

ORDER—November 21, 1950

It is Ordered by the Court sua sponte that the order entered herein September 28, 1950, denying appellee's petition for rehearing of this case before the full Court be, and it is hereby, vacated.

Per Curiam.

[File endorsement omitted.]

[fol. 50] UNITED STATES COURT OF APPEALS

[Title omitted]

Before Stephens, Chief Judge, and Edgerton, Clark, Wilbur K. Miller, Prettyman, Proctor, Bazelon, Fahy, and Washington, Circuit Judges

ORDER—December 21, 1950

On consideration of the appellee's petition for a rehearing in banc of the appeal herein, it is

Ordered by the Court that the petition be, and it is hereby, denied.

Per Curiam.

[File endorsement omitted.]

[fols. 51-52] Supplemental Designation of Record omitted in printing.

[fol. 53] Clerk's Certificate to foregoing record omitted in printing.

[fol. 54] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed April 30, 1951

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Clark took no part in the consideration or decision of this application.